

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:04-CR-00124-F-1
No. 7:12-CV-00183-F

QUINCY LEVON SIDBURY,)
Petitioner,)
)
v.) O R D E R
)
UNITED STATES OF AMERICA,)
Respondent.)

This matter is before the court on Quincy Levon Sidbury's Motion for Certificate of Appealability [DE-59].

A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v.*

McDaniel, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003).

However, when a district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

In this case, a review of the record reveals that Sidbury filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 on June 29, 2012. [DE-49.] On April 17, 2013, the court dismissed Sidbury's § 2255 motion, on the bases that this court lacked jurisdiction and that Sidbury had waived his right to raise the claim he presented in his § 2255 motion. [DE-54.] In the court's April 17, 2013 Order, it was noted that Sidbury previously filed

a § 2255 motion, yet he failed to get pre-filing certification from the Fourth Circuit Court of Appeals prior to filing his § 2255 motion.

The court has reviewed the record and its April 17, 2013 Order, which dismissed Sidbury's § 2255 motion. The court notes that the April 17, 2013 Order specifically provides that Sidbury did not make the appropriate showing for a certificate of appealability, and as such, a certificate of appealability was denied. Now, once again, the court finds that Sidbury has not made the requisite showing for a certificate of appealability. Therefore, Sidbury's Motion for Certificate of Appealability [DE-59] is DENIED.

SO ORDERED.

This, the 8 day of April, 2014.



JAMES C. FOX
Senior United States District Judge